



87-SBE-022

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the **Matter** of the Appeal of)
HENRY AND **JEANETTE STUMPF**) No. 85R-1068-GO

For Appellants: Henry **Stumpf**,
in pro. per.

For Respondent: Karen D. Smith
Counsel

O P I N I O N

This ~~appeal~~ is made pursuant to section 19057, subdivision (a), ¹⁷ of the Revenue and **Taxation** Code from the action of the Franchise Tax Board in denying the claim of ~~Henry~~ and Jeanette **Stumpf** for refund of personal income tax in the amounts of \$1,407 and \$300 for the years 1980 and 1981, respectively.

1/ Unless otherwise specified, all section references **are** to sections of the Revenue and Taxation Code as in effect for the years in issue.

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The issues for decision are whether appellants are entitled to an operating loss in 1980 and a capital loss in 1981 arising from an interest which they allegedly held in a limited partnership.

Appellants filed resident California personal income tax returns for the years at issue. On their 1980 return, appellants claimed an operating loss of \$12,779 on their schedule E arising from their purported holding in a limited partnership denoted as Annco Properties, Ltd., (hereinafter "Annco") (Resp. ar., Ex. D) and on their 1981 return, they claimed a capital loss of \$10,632 on their schedule D arising from an alleged sale at a loss of Annco (Resp. Br., Ex. F). Upon audit, respondent concluded that appellants had not established that they, in fact, were partners in Annco and, if so, what the basis of their partnership interest in Annco was. Respondent thus determined that appellants had not substantiated entitlement to either of the above-noted deductions and, accordingly, disallowed both losses and issued proposed assessments. Appellants paid the assessments and filed a claim for refund. Denial of appellants' claim led to this appeal.

It is well settled that deductions are a matter of legislative grace and the taxpayer bears the burden of proving that he is entitled to deductions claimed. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L.Ed. 1348] (1934).) A determination by respondent that a deduction should be disallowed is supported by a presumption that it is correct. (Appeal of Nake M. Kamrany, Cal. St. ad. of Equal., Feb. 15, 1972.)

Section 17858, subdivision (a), provides, in relevant part, that "[a] partner's distributive share of partnership loss (including capital loss) shall be allowed only to the extent of the adjusted basis of such partner's interest in the partnership. ..." Accordingly, it is elementary that in order for appellants to be entitled to deduct losses arising from Annco, they must establish first that they were partners in Annco and, second, the extent of such interest.

On appeal, appellants allege that they invested \$32,500 in Annco and another limited partnership denoted as 400 Primrose (hereinafter "Primrose") and that they lost the entire amount, plus \$2,200 in legal expenses, through bankruptcy. (Nov. 5, 1984, Ltr. to Franchise Tax Board.) However, the record contains no substantiation of appellants' alleged investment in Annco. Instead, a

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document indicates that appellants paid consideration of \$32,500 for a 10 percent interest in Primrose. (Resp. Br., Ex. G-3.) That document is of limited value in clarifying what, if any, interest appellants had in Annco. For example, that single notation in that lone document does not reveal the date appellants acquired their interest in Primrose, the deductions that were generated by Primrose which would affect appellants' basis in that partnership, the adjusted basis of Primrose, and the transaction, if any, in which appellants' interest in Primrose was transformed into an interest in Annco. Indeed, outside of the above-noted letter and this single notation, appellants have submitted no evidence or arguments in support of their claim in this appeal. In contrast, the court appointed receiver in the bankruptcy proceeding involving the general partner of Annco indicates that significant legal issues existed as to what Annco owned and what "profit and loss interest[s] are attributable to each of its partners." (Resp. Br., Ex. E-11.) Moreover, no partnership returns were filed for Annco for 1979, 1980 or 1981 from which partners' distributive share of profit or loss can be determined. No other records have been provided to substantiate any claimed operating loss and/or entitlement to a capital loss. (Resp. Br. at 4.)

In such a situation, we have no choice but to find that appellants have not met their burden of proof and, accordingly, to sustain respondent's action.²⁹

²⁹ Respondent advanced other arguments in this appeal. For example, respondent argued that appellants had not substantiated that a sale or exchange of Annco occurred in 1981 as is required for capital loss purposes. However, in light of our finding, no discussion of these alternative arguments is required.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this **proceeding**, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Henry and Jeanette Stumpf for refund of personal income tax in the amounts of \$1,407 and \$300 for the years 1980 and 1981, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 3rd day
of March , 1987, by the State **Board of** Equalization,
with Board Members Mr. Collis, Mr. Bennett, Mr. Carpenter
and **Ms.** Baker present.

<u>Conway H. Collis</u>	, Chairman
<u>William M. Bennett</u>	, Member
<u>Paul Carpenter</u>	, Member
<u>Anne Baker*</u>	, Member
<u></u>	, Member

*For Gray Davis, per Government Code section 7.9